No. 558.

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No. 558.

UNITED STATES OF AMERICA,

IN THE SUPREME COURT.

JAMES W. WILSON, PLAINTIFF IN ERROR,

versus

THE STATE OF NORTH CAROLINA ON THE RELATION OF L. C. CALDWELL, DEFENDANT IN ERROR.

To the Honorable the Supreme Court of the United States:

The petition of James W. Wilson, plaintiff in error in this cause, respectfully showeth—

1. That there is involved in this action a contest over the office of Railroad Commissioner for the State of North Carolina and the Chairmanship of the Board of Railroad Commissioners.

2. That the Governor of North Carolina undertook to suspend your petitioner from his said office and fill his place with the relator, L. C. Caldwell; that upon your petitioner's refusal to surrender his office upon the action of the Governor—which he considered and still considers illegal—the present action, in the nature of *quo warranto*, was brought; that upon the trial in the Superior Court of Iredell County the issues tendered by your petitioner were excluded, and the Court gave judgment for the plaintiff. Thereupon your petitioner appealed, and a *supersedeas* bond was filed and accepted, and your petitioner continued to discharge the duties of his office.

3. That judgment in the Supreme Court of North Carolina was rendered about 4.30 o'clock p. m. on the 23d day of December, 1897; that a writ of possession was issued to the Sheriff of Wake County at 5.30 o'clock on said day, commanding the said Sheriff to eject your petitioner from the rooms of the Railroad Commission and to put the relator in possession thereof and of the books and papers of said office, and to make return to the February Term, 1898, of said Court; that said writ of possession has never been executed.

4. That the counsel of your petitioner sued out a writ of error, returnable to this Court, which was issued by the Clerk of the United States Circuit Court for the Eastern District of North Carolina, and was duly allowed by the Chief Justice of the Supreme Court of North Carolina on the said 23d day of December, 1897. The said counsel duly tendered a good and sufficient bond, conditioned as required by law in cases of *supersedeas*, and the Chief Justice of the said State Supreme Court duly approved the same and signed the citation on said 23d day of December, 1897. Thereupon, at 7.10 o'clock p. m. on said day, the said writ of error, with the petition therefor, and the assignment of errors and the said citation and bond, were filed in the Clerk's office of the said Supreme Court, and at the same time copies of said writ of error were lodged in said Clerk's office for the State of North Carolina and for the relator, Caldwell. A few minutes thereafter one of your petitioner's counsel saw W. H. Day, Esq., acting as counsel for the relator, and told him that the *supersedeas* had been granted, whereupon the said Day went into the said Clerk's office and asked to see the bond, which was at once handed to him, and he examined the same. The Railroad Commission rooms and the Supreme Court Clerk's office are in adjoining buildings, about ten or twenty feet apart, and the Clerk of the Supreme Court lives about two hundred yards off.

On information and belief, the Clerk of the Supreme

Court, in a few minutes after the lodging of said copies of the writ of error, sent by his deputy the copy lodged for the State of North Carolina to Daniel L. Russell, Governor of said State, and it was promptly delivered to him. The said deputy was unable to find the said Caldwell and Pearson, the latter being engaged in a similar contest with S. Otho Wilson, but showed the copies for them to W. H. Day., Esq., their counsel, and he read the same several hours prior to the forcible entrance into said rooms, hereinafter set forth.

Further, on information and belief, your petitioner says that the said Governor, after the copy of the writ of error was handed him and with full knowledge of the *supersedeas*, sent for a locksmith and sent him with the said Caldwell and Pearson, with instructions to pick the locks on the doors of said Commission rooms, and open the doors. Said locksmith did so, and said Caldwell and Pearson at once entered and took possession about 11.30 o'clock p. m., on said 23d December, 1897, and had new locks put on and have since remained in possession.

On information and belief, the said Caldwell and Pearson well knew of the action of the Chief Justice in the premises, and took possession as aforesaid after conference with the Governor. The home of their counsel, Mr. Day, is in about fifty yards of the said Commission rooms.

5. That on the morning of the 24th December, 1897, the said W. H. Day, Esq., as counsel for the relator, made a motion in open Court to set aside said *supersedeas;* and at the same time your petitioner made a motion that said execution or writ of possession be recalled on account of the *supersedeas.* Both motions were refused, and the Justice delivering the opinion warned all persons against interfering with the said Caldwell and Pearson and announced that they would be in contempt of the Supreme Court of the State if they molested or disturbed them in the office or the discharge of the duties of the same. Since said time the

said Caldwell and Pearson have begun to discharge the duties of the office, and have held a regular meeting for the transaction of businesss, and your petitioner is unable to assert his rights on account of the threat against him in the said opinion filed and which is here referred to for greater certainty.

6. Your petitioner has filed a full and complete transcript of the record of said case, and he prays that the same be referred to for a fuller statement of the facts of the controversy and the said proceedings.

Wherefore your petitioner prays that the said L. C. Caldwell may be compelled to desist from the discharge of the duties of said office, and that the said rooms and books and papers of the office be restored to your petitioner; that the said L. C. Caldwell be adjudged to be in contempt of this honorable Court, and that your petitioner be restored to his position; and for such other and further relief as may be just. And your petitioner will ever pray.

R. O. Burton,
Attorney for Petitioner.

United States of America,
Eastern District of North Carolina.

James W. Wilson, being duly sworn, says the foregoing petition is true, of his own knowledge, except as to allegations therein made on information and belief. As to those matters, he believes it to be true.

James W. Wilson.

Sworn to and subscribed before me, this 1st day of January, 1898.

[L. S.] N. J. Riddick,
Clerk U. S. Circuit Court Eastern District N. C.

IN THE SUPREME COURT OF THE UNITED STATES.

JAMES W. WILSON, *Plaintiff in Error,*
versus
THE STATE OF NORTH CAROLINA on the relation of L. C. CALDWELL, *Defendant in Error.*
} *Notice.*

To Messrs. A. C. Avery and MacRae & Day, Attorneys for Defendant in Error, and L. C. Caldwell:

Take notice, that on the foregoing petition and affidavit I shall move before the Honorable, the Supreme Court of the United States, on Monday, January 17, 1898, or as soon thereafter as counsel can be heard—

1. That the relator, L. C. Caldwell, be attached for contempt, on account of his conduct in disregard of the *supersedeas* granted in this cause.

2. That he be commanded to desist from acting as Railroad Commissioner till the decision of this controversy; and in the meantime that he restore the plaintiff to the office and turn over to him the rooms of said Railroad Commission, with all the books, papers and property pertaining to said office.

3. That a writ of restitution be granted to restore said plaintiff in error to said office.

4. That a writ issue to the Sheriff of Wake County, commanding him to proceed no further with the writ of possession in his hands.

5. For such other and further relief as the nature of the case may require.

This January 6, 1898.

R. O. BURTON,
Attorney for Plaintiff in Error.